



Dan & Sara Rametta
Richard Sommerville
Citizens For Sanity.Com, Inc.
Save Our Serenova
& The Commenters Group
19840 State Road 54
Lutz, Fl. 33558
813-949-4628
ramettadan@hotmail.com

05/14/2019

Permit Application Number SAJ-2011-00551 (SP-TSH)

Formerly: SAJ-2011-00551 (IP-TEH)

Formerly: SAJ-1998-2682 (IP-MN); Ridge Road Extension (RRE)

Colonel Andrew D. Kelly
Commander, Jacksonville District
U.S. Army Corps of Engineers
701 San Marco Blvd.
Jacksonville, FL 32207-8175

Shawn Zinszer,
Chief, Regulatory Division
Jacksonville District
U.S. Army Corps of Engineers
701 San Marco Blvd.
Jacksonville, FL 32207-8175

Jay Herrington,
Field Office Supervisor
U. S. Fish & Wildlife Service
North Florida Ecological Services Office
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7517

Heath Rauschenberger
Deputy Field Supervisor
U. S. Fish & Wildlife Service
North Florida Ecological Services Office
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7517

Annie Dziergowski,
Project Consultant Supervisor
U. S. Fish & Wildlife Service
North Florida Ecological Services Office
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7517

Dear Colonel Kelly, Regulatory Chief Zinszer, USFWS Field Office Supervisor Herrington, Deputy Field Supervisor Rauschenberger and Project Consultant Supervisor Dziergowski,

Please put this Comment # 29 into the Administrative Record.

INTRODUCTION

COMMENT # 29 CONTAINS TWO SECTIONS THAT BRIEFLY COVER THE NEED FOR CURRENT 2019 SURVEYS FOR THE REMAINING SPECIES NOT DISCUSSED IN PREVIOUS COMMENTS. THEY INCLUDE E. I. SNAKES AND FLORIDA SCRUB JAYS.

COMMENT INSERT—SECTION 7(a)(2) OF THE ESA REQUIRES THAT THE FEDERAL AGENCIES MAKE DECISIONS BASED ON CURRENT, RELIABLE DATA. ACCORDING TO THE REFERENCE BELOW, THEY MUST REQUIRE THAT THEY ARE PROVIDED WITH “...the information necessary to allow it to know or reliably estimate the probable individual and cumulative consequences of its program on the environment, generally, and listed resources specifically...” THAT WOULD NECESSITATE LISTED SPECIES SURVEYS THAT REPRESENTED CURRENT SPECIES NUMBERS AND HABITAT QUALITY THAT MAY HAVE GOTTEN BETTER OR WORSE, DUE TO SWFWMD’S ONGOING BURN MANAGEMENT ACTIVITIES IN THE SERENOVA PRESERVE FOR THE PAST SIX YEARS SINCE THE LAST SURVEYS WERE CONDUCTED.

PAGE 39

The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. **The word “harm” in the definition of “take” means an act which actually kills or injures wildlife.** Such an act **may include significant habitat modification or degradation** where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) Information on the location of threatened and endangered species and **their critical habitat** can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> or [http:// www.fws.gov/ipac](http://www.fws.gov/ipac) and [http:// www.noaa.gov/fisheries.html](http://www.noaa.gov/fisheries.html) respectively.

AND PG 47

Instead of trying to adapt traditional consultation approaches to programmatic consultations, we have developed an assessment framework that specifically allows us to **help Federal agencies insure that their programs comply with the requirements of section 7(a)(2) of the ESA as described in the Interagency Endangered Species Consultation Handbook (U.S. Fish and Wildlife Service and NMFS 1998; Chapter 5).** Specifically, our programmatic consultations examine the decision-making processes that are integrated into Federal agency programs to determine whether those decision-making processes are likely to insure that specific actions the agency authorizes, funds, or carries out through the program comply with the requirements of section 7(a)(2). That is, during programmatic consultations **we ask whether or to what degree the Federal action agency (in this case, the USACE) has structured its proposed program so that the agency (1) collects the information necessary to allow it to know or reliably estimate the probable individual and cumulative consequences of its program on the environment, generally, and listed resources specifically;** (2) evaluates the information it collects to assess how its actions have affected the environment, generally, and endangered species, threatened species, **and designated critical habitat specifically;** and (3) when this information suggests that the activities authorized, funded, or carried out by its program no longer comply with the mandate and purposes of its program or of section 7(a)(2) of the ESA, **does the Action Agency use its authorities to bring those activities into compliance with program mandates and the requirements of section 7(a)(2) of the ESA.** Here, “program structure” refers to the decision-making processes, applications of standards and criteria (including standards of information and treatment of uncertainty), feedback loops and internal audits, and controls (including permit conditions) that agencies employ to ensure that agency decisions to authorize fund, or carry out specific actions or a class of actions are likely to fulfill the mandates of the program before the agency authorizes, funds, or carries out those actions.

COMMENT INSERT—AS STATED ABOVE, THE UASCE MUST ENSURE THAT THEY AND THE USFWS MAKE A DECISION AFTER THEY HAVE COLLECTED “...the information necessary to allow it to know or reliably estimate the probable individual and cumulative consequences of its program on the environment, generally, and listed resources specifically...” USING AN OUTDATED 6-YEAR OLD SURVEY ON WHICH TO BASE ANY FINAL DECISIONS IS NOT THE “INFORMATION NECESSARY” TO ALLOW ANY KIND OF “RELIABLE ESTIMATES” OF ADVERSE EFFECTS TO A SPECIES OR ITS HABITAT THAT MAY HAVE RECOLONIZED THE ACTION AREA.

VERIFICATION OF THE NEED FOR CURRENT SURVEYS FOR LISTED SPECIES BY A USACE EXPERT

COMMENT INSERT—THE BELOW 2009 EMAIL FROM THE USACE STATES THAT IF THE ACTION AGENCY (THE ACOE) “finds a BO to be outdated or no longer an accurate reflection of current conditions...” THEN IT CAN REQUEST A NEW SITE SURVEY. A PREVIOUS BO FOR SCRUB JAYS 13 YEARS AGO IN 2006 WAS BASED ON UNOCCUPIED TERRITORY. IF A NEW SURVEY INDICATED THAT THE ACTION AREA WAS NOW OCCUPIED, THEN A NEW BO WITH DIFFERENT TERMS AND CONDITIONS WOULD BE WARRANTED. THAT IS EXACTLY WHERE THE REVIEW OF THIS APPLICATION IN 2019 IS CURRENTLY AT.

> Subject: FW: Two questions for an ACOE Endangered Species expert.
> Date: Mon, 28 Sep 2009 12:48:53 -0400
> From: Doug.M.Garman@usace.army.mil
> To:
>
> Answers to your questions:
>
> **Question 1: Correct. If the acting agency finds a BO to be outdated or no
> longer an accurate reflection of current conditions, the action agency may
> request that an applicant conduct a new site survey to determine the
> presence/absence of endangered species/critical habitat on the site.
> Generally, any terms and conditions of the previous BO would likely be
> replaced with the revised BO.**
>
> **Question 2: Correct.** The new BO may remain the same or have new, revised
> terms and conditions or reasonable and prudent measures **based upon the results
> of the more recent T&E species survey and any other new circumstances
> affecting the property. Mitigation may be added if necessary and an
> Incidental Take permit may be required based on the new findings.**
>
> Hope this helps,
>
> Doug Garman
> U.S. Army Corps of Engineers
> Public Affairs Office
>

> -----Original Message-----
> From:
> Sent: Thursday, September 17, 2009 8:39 AM
> To: HQ-PUBLIC AFFAIRS
> Subject: Two questions for an ACOE Endangered Species expert.

>
 >
 >
 > Dear ACOE,
 >
 > Do you have someone in your agency who is an expert on Endangered Species and
 > how their presence or absence affects an ACOE Dredge & Fill permit?
 >
 > Please forward these two questions to that person. Thank you.
 >
 > *****
 >
 > Can you please answer two questions about how wildlife surveys influence a
 > USFWS Biological Opinion (BO) required as a result of a Section 7
 > consultation between the ACOE and the USFWS?
 >
 >
 > 1) **The first question** has to do with a wildlife survey that has been
 > determined to be INVALID by the ACOE, which is the 'acting agency.'
 >
 > If a particular ESA listed species (Section 7 consultation) was not found in
 > the required wildlife survey, but that survey is now outdated and was also
 > determined by the 'action agency' (the ACOE) to be INVALID, and a new survey
 > is now being requested by that agency, then any "Terms and Conditions" and
 > "Reasonable and Prudent Measures" in the BO that were based on that INVALID
 > survey, would also therefore be INVALID.
 >
 > Is this correct? And would the BO itself also be considered invalid?
 > 2) **The second question is:**
 >
 > If and when a new wildlife survey is conducted to replace the INVALID one,
 > the BO could either remain as is, if the listed species was not found in the
 > new survey, OR, if that listed species was found to be present, and the
 > habitat determined to be "occupied," then a revised BO would have to be
 > written with revised "Terms and Conditions" and "Reasonable and Prudent
 > Measures," including appropriate mitigation (there is no required mitigation
 > now since the territory was determined to be "unoccupied, albeit by an
 > "invalid" survey) and an "incidental take" permit issued.
 >
 > Is this correct?
 >
 > Thank you. I really appreciate your assistance.

COMMENT INSERT—THE REFERENCE BELOW IS FROM A 2016 60-DAY NOTICE TO SUE THE USFWS IN CALIFORNIA. IT OUTLINES THE SPECIFIC REQUIREMENTS OF THE ESA REGARDING THE HARM OR “TAKE” OF BOTH A LISTED SPECIES AND ITS CRITICAL HABITAT. THE RED HIGHLIGHTED SECTIONS REFER TO THE FACT THAT THE ESA REQUIRES THAT ANY ADVERSE EFFECTS TO A LISTED SPECIES AND THEIR CRITICAL HABITATS MUST BE DETERMINED AND THEN ADDRESSED BY THE FEDERAL AGENCIES. THAT ‘DETERMINATION’ MUST BE BASED ON CURRENT, RELEVANT INFORMATION OF THE POSSIBLE PRESENCE OF THAT SPECIES, HOW MANY THERE ARE, AND THE CONDITION OF THE HABITATS IN OR NEAR THE ACTION AREA.

https://www.biologicaldiversity.org/news/press_releases/2016/peninsular-bighorn-sheep-09-27-2016.html

CENTER for BIOLOGICAL DIVERSITY

Arizona • California • Nevada • New Mexico • Alaska • Oregon • Montana • Illinois • Minnesota • Vermont • Washington, DC
www.BiologicalDiversity.org

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED; AND ELECTRONIC MAIL
September 27, 2016

Sixty-Day Notice of Intent to Sue the U.S. Fish and Wildlife Service, Coachella Valley Conservation Commission, California Department of Fish and Wildlife and City of La Quinta Pursuant to the Endangered Species Act...

III. Requirements of the ESA

“Section 9 of the ESA and its implementing regulations prohibit the unauthorized “take” of listed species. 16 U.S.C. § 1538(a)(1); 16 U.S.C. § 1533(d); 50 C.F.R. § 17.31. “Take” is defined broadly to include harming, harassing, trapping, capturing, wounding or killing a protected species either directly **or by degrading its habitat**. See 16 U.S.C. § 1532(19).

In order to obtain an Incidental Take Permit under the ESA Section 10 for incidental harm to listed species, a habitat conservation plan (“HCP”) is needed. HCPs are designed to **offset any harmful effects the proposed activity might have on the species** in accordance with § 10 of the ESA. 16 U.S.C. § 1539. The ESA has strict requirements for consultation and implementation of Incidental Take Permits that cannot be violated.

Section 7 of the ESA requires all federal agencies to ensure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species or **(2) result in the destruction or adverse modification of the critical habitat of such species**. 16 U.S.C. § 1536(a)(2).

If the federal agency, including the FWS, determines that its proposed action may affect **any listed species or critical habitat**, the agency must engage in formal consultation with FWS. 50 C.F.R. § 402.14.

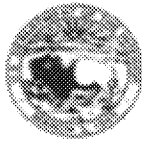
If the biological opinion concludes that the action is not likely to jeopardize the continued existence of a listed species, **and will not result in the destruction or adverse modification of critical habitat**, FWS must provide an “incidental take statement...”

COMMENT INSERT—THE USFWS CANNOT KNOW THE CURRENT EXTENT OF TAKING FOR ANY LISTED SPECIES, NOR THE EXTENT OF ANY RECENT MODIFICATION OF CRITICAL HABITATS, UNLESS THEY KNOW THE CURRENT NUMBERS THAT ARE IN OR NEAR THE ACTION AREA, AND THE CURRENT CONDITION OF ANY HABITAT THAT MAY HAVE BEEN MODIFIED. THE LAST SURVEY WAS IN 2013 AND, IN THE INTERIM, LISTED SPECIES MAY HAVE DISPERSED INTO THAT AREA AND THE HABITAT MAY HAVE BEEN CONSIDERABLY IMPROVED BY SWFWMD’S BURN MANAGEMENT PROGRAM. THAT WOULD INCREASE THE “AMOUNT OR EXTENT OF TAKING” AND AMOUNT OF ADVERSE IMPACTS TO MODIFIED (IMPROVED) HABITAT THAT COULD NOT BE EXCEEDED.

(2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;

COMMENT INSERT—THAT NEW INFORMATION WOULD BE OBTAINED BY A 2019 SURVEY. THERE IS NO OTHER WAY TO OBTAIN THAT INFORMATION.

COMMENT INSERT—IN THE BELOW COMMUNICATION FROM THE USFWS JACKSONVILLE FIELD OFFICE SUPERVISOR DAVE HANKLA IN 2007 TO PASCO, HE STATED THAT AGENCY’S POSITION REGARDING THE VALIDITY PERIOD OF ANY LISTED SPECIES SURVEY. HE SPECIFICALLY STATED THAT, IN GENERAL, THOSE SURVEYS ARE GOOD FOR 3 YEARS. THAT MAKES COMPLETE SENSE WHEN CONSIDERING THAT MEMBERS OF A LISTED SPECIES ARE CONSTANTLY DISPERSING LOOKING FOR NEW FORAGING AND MATING OPPORTUNITIES. THE QUALITY OF THEIR CRITICAL HABITATS IS DEPENDENT ON THE EFFECTIVENESS OF THOSE BURN MANAGEMENT PROGRAMS, ANNUAL AMOUNTS OF RAINFALL AND A MYRIAD NUMBER OF OTHER FACTORS.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
6020 Sandpoint Drive, South
Suite 100
Jacksonville, Florida 32216-0812

06-00017-00000-00

FWS Log No. 41958-2006-F-0338

December 18, 2007

Colonel Paul L. Grosskruger, District Engineer
U.S. Army Corps of Engineers
Regulatory Division, South Permits Branch
West Permits Section
P.O. Box 4970
Jacksonville, Florida 32232-0019
(Attn: Michael Nowicki)

RECEIVED
DEC 21 2007
JACKSONVILLE DISTRICT
USACE

Dear Colonel Grosskruger:

The U.S. Fish and Wildlife Service has reviewed permit application SAJ-1998-2682 (IP-MN) from Pasco County Board of County Commissioners for the proposed Ridge Road Extension, Pasco County, Florida. Included in the correspondence are the responses from the applicant regarding the January 25, 2007, Corp's Request for Additional Information; the July 10, 2006 letter to the Corps; and the revised Wetland Mitigation Plan for Phases I & II. Our comments are submitted in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.) and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

Conclusion

The contradiction between the text and plan set for the Pithlachascotee River crossing, including the constraints in the area, as well as the potential effectiveness of the box culvert designs and locations are of concern to the Service. The Service would encourage bridge structures similar to those incorporated into the Suncoast Parkway facility to ensure effective movement of wildlife across the landscape. In general, wildlife surveys for the entire proposed corridor should reflect current conditions with surveys no older than three years. The Service continues to question the appropriateness, the lack of detailed specifics, and the uncertainties of the proposed mitigation. Therefore, in accordance with Part IV(C)(a) of our Interagency Memorandum of Agreement, the Service recommends that the request for a Department of the Army permit for the proposed project be held in abeyance. The Service is willing to meet with the applicant to reach resolution on these issues. If you have any questions regarding this response, please contact Mr. Todd Mocklenberg at (727) 820-3705.

Sincerely,

David L. Hanks
Field Supervisor

Surveys NO
older than
3 years.

LAST E.I. SNAKE Survey was 5 yrs. Ago - As
were All other ESA Listed Species surveys.

PART 1— E. I. SNAKES

COMMENT INSERT—THE BELOW USFWS E I SNAKE SURVEY PROTOCOL STATES THAT E I SNAKE SURVEYS ARE VALID FOR 2 YEARS.

Survey Protocol for the Eastern Indigo Snake, *Drymarchon couperi*,
in North and Central Florida
September 2011

Reporting

The surveyor(s) and their supervisor should sign and date the completed Final Survey Report and data sheets provided in **Appendix B** and submit it to the Service with the following statement included: "I have read and understand the survey protocol for the eastern indigo snake. This report represents a true, accurate and representative description of the results obtained after following this Protocol." The Service will consider the results of the survey protocol to be **valid for two (2) years** from the date of completion, unless the habitat has been significantly modified.

COMMENT INSERT—IT MUST BE REMEMBERED THAT E I SNAKES CAN AND DO DISPERSE LONG DISTANCES. THEY ALSO HAVE BEEN IDENTIFIED ON AT LEAST FOUR OCCASIONS NEAR THE ACTION AREA. IT IS POSSIBLE THEY HAVE DISPERSED NUMEROUS TIMES ACROSS THE ACTION AREA GIVEN THAT, AS STATED BELOW, THEY HAVE BEEN VERIFIED TO TRAVEL 13 MILES IN SOUTHEASTERN GEORGIA.

<https://www.fws.gov/panamacity/resources/EasternIndigoSnakeFactSheet.pdf>

Eastern Indigo Snake Fact Sheet

How big is their territory? Eastern indigo snake has a large territory based on studies conducted on male snakes. Range of southeastern Georgia snakes were found to be as large as 3,000 acres (1,600 ha), and **one male was noted to move a distance of about 13 miles (22 km).**

Prepared by: James Godwin Alabama Natural Heritage Program Environmental Institute
Auburn University

**TWO E I SNAKE EXPERTS PROVIDE EVIDENCE THAT A NEW SURVEY IS
NEEDED AND THE E I SNAKE'S EXISTENCE DEPENDS ON THE
PRESERVATION OF LARGE TRACTS OF PUBLICLY-OWNED LANDS**

COMMENT INSERT—THE RESEARCH ARTICLE BELOW WAS WRITTEN BY DR. KENNETH DODD AND WILLIAM BARICHIVICH. DR. DODD IS A STAFF HERPETOLOGIST IN THE FISH AND WILDLIFE SERVICE'S OFFICE OF ENDANGERED SPECIES AND, AT THE TIME THE E I SNAKE WAS ORIGINALLY LISTED, ACTUALLY WROTE THE RULE TO LIST THE SNAKE. HE IS ONE OF THE WORLD'S FOREMOST EXPERTS ON THE EASTERN INDIGO SNAKE. HE AND BARICHIVICH QUOTE NUMEROUS PROFESSIONAL EXPERTS WHO ALL AGREE THAT “one of the main threats to this species is habitat loss.” THEY ALSO STATE THAT SINCE THE E I SNAKE IS THE LARGEST SNAKE IN NORTH AMERICA, THEY HAVE A RATHER LARGE RANGE OF BETWEEN 350 AND 450 ACRES, WITH 450 ACRES THE MEDIAN RANGE IN FLORIDA.

https://www.researchgate.net/publication/242718194_Movements_of_large_snakes_Drymarchon_Masticophis_in_north-central_Florida

MOVEMENTS OF LARGE SNAKES (DRYMARCHON, MASTICOPHIS) IN NORTH-CENTRAL FLORIDA

C. KENNETH DODD, JR. AND WILLIAM J. BARICHIVICH
Florida Integrated Science Center, U.S. Geological Survey, 7970 N.W. 71st Street,
Gainesville, FL 32653

“With increasing loss and fragmentation of habitat to development (Kautz, 1993, 1998), it becomes critically important to understand the spatial requirements of these species if they are to be maintained as functional components of remaining natural communities.

“The eastern indigo snake (*Drymarchon couperi*)...one of the main threats to this species is habitat loss (Lawler, 1977; Moler, 1992b; Stevenson et al, 2003)...”

“This adult eastern indigo snake’s home range extended...between 100 and 185 ha depending on the estimator (Table 1). Most of his time was spent in mixed pine (*Pinus palustris*)-hardwood (*Quercus* sp.) uplands adjacent to clear water lakes... AND “A mean MCP estimate of 185 ha for the male eastern indigo snake is within the range reported in Florida (23–281 ha in the Gulf Hammock region of north Florida, N 5 5, Moler, 1985.”

COMMENT INSERT—158 ha = 370.6 ACRES, AND 185 ha = 457 ACRES.

“Protecting habitat for large snakes—Our results and those of our colleagues (Franz, 1995, 2005; Timmerman, 1995) suggest that large snakes need large amounts of habitat in order to continue as functional components of upland north-central Florida ecosystems.”

“Based on the results of telemetry studies at KSC, Ordway, Archbold Biological Station (Layne and Steiner, 1996), elsewhere in Florida (Moler, 1985), and at Fort Stewart, Georgia (Hyslop et al., 2006), we suggest that the only way to maintain viable populations of some of the largest snakes in the Southeast will be by protecting large contiguous sections of unfragmented habitat.”

COMMENT INSERT—THE STATEMENT ABOVE THAT THE E I SNAKE’S EXISTENCE IS PREDICATED ON THE PROTECTION OF “...large contiguous sections of unfragmented habitat” POINTS TO THE CRITICAL IMPORTANCE OF PRESERVING THE HABITAT QUALITY FOR THE E I SNAKE ON THE OVER 19,000-ACRE STARKEY/SERENOVA PRESERVE. THE RRE WILL DEFINITELY CAUSE AN END TO THE SWFWMD’S BURN MANAGEMENT PROGRAM RESULTING IN DEGRADATION OF THAT E I SNAKE’S CRITICAL HABITAT.

COMMENT INSERT—BELOW IS A 2017 EMAIL FROM DIRK STEVENSON, AN E I SNAKE EXPERT WITH THE ORIENNE SOCIETY IN GEORGIA. HE EXPLAINS THAT THEY CONDUCT E I SNAKE SURVEYS EVERY 3 YEARS, THAT THE NUMBERS OF E I SNAKES IN THE RRE ACTION AREA DURING THE CURRENT 4-YEAR INTERIM SINCE THE LAST 2013 SURVEY COULD BE MORE OR LESS, AND HE AGREES THAT “...a more current survey is better information...”

----- Forwarded message -----

From: **Dirk Stevenson** <dstevenson@oriannesociety.org>

Date: Tue, Apr 4, 2017 at 9:08 AM

Subject: RE: Two questions about E.I. Snakes

To: Laura

I appreciate you contacting me, I will do my best below, I have friends/colleagues with US FWS and GA DNR and will contact them on your behalf if you want me to.

Please let me know if you need more, ok, Dirk

“We conduct presence/absence surveys for indigo snakes on protected lands in South Georgia (to detect population trends) on a 3-year interval, that is we survey our study sites once every 3 years.”

“You are correct, there could be more, or fewer (or none) snakes present on-site today.”

“I can see your argument, implied here anyway, that a more current survey is better information, which I agree with.

COMMENT INSERT—BASED ON THE ABOVE REFERENCED E I SNAKE EXPERTS REASERCH AND STATEMENTS, IT APPEARS THAT THE FEDERAL REVIEWING AGENCIES MUST REQUIRE A NEW

LISTED SPECIES SURVEY IN 2019. THERE SEEMS NO OTHER WAY TO AVOID AN ARBITRARY AND CAPRICIOUS RULING BY A FEDERAL COURT.

EXCERPTS FROM THE APPLICANTS' BA PERTAINING TO THE E I SNAKE

COMMENT INSERT—THE APPLICANT BELOW STATES THAT THERE HAVE BEEN 4 DOCUMENTED SIGHTINGS OF E I SNAKES IN OR NEAR THE ACTION AREA, THAT THE LAST SURVEY WAS ON MARCH 19, 2013, AND THAT “...quantification of existing population levels is difficult...” BUT DIRK STEVENSON ABOVE CONDUCTS SURVEYS IN GEORGIA EVERY THREE YEARS.

3.4.2 Regional Occurrence and Previous Surveys

“Prior to Cardno’s field work, as discussed below, eastern indigo snakes had been documented four times within the general region of the Extension.”

3.4.5.1 *Environmental Baseline Conditions*

“Field work specifically targeting eastern indigo snakes was completed from December 12, 2012 through March 19, 2013...”

“However, quantification of existing population levels is difficult.”

COMMENT INSERT—THE IMPACTS LISTED BELOW THAT WILL LIKELY OCCUR TO THE E I SNAKE MUST BE MORE SPECIFICALLY QUANTIFIED AS TO THEIR OVERALL EXTENT AND AS TO HOW MANY MEMBERS OF THAT SPECIES WILL BE AFFECTED AS FAR AS THEIR “MATING AND DISPERSAL OPPORTUNITIES” ARE CONCERNED.

“To the extent that the roadway creates a barrier to movement by eastern indigo snakes and their prey, affected snakes would have to alter their home ranges, and could face reduced foraging, mating and dispersal opportunities.”

3.4.5.3 *Cumulative Effects*

“The remaining lands along the Extension east of the Suncoast Expressway may also be developed. Assuming that it occurs, this development will happen whether or not the Extension is constructed, and it will likely ultimately result in a loss of eastern indigo snakes east of the Suncoast Expressway.”

COMMENT INSERT—THE EFFECTIVENESS OF THE WILDLIFE CORRIDORS SPOKEN OF BELOW ARE DISMISSED BY THE APPLICANTS. WHAT THEY FAIL TO MENTION IS THAT THE THREE CORRIDORS THAT LEAD INTO AND OUT OF THE STARKEY/SERENOVA PRESERVE ARE EACH OVER 2,200 FEET WIDE. THAT IS ALMOST ½ MILE. IT CAN BE EXPECTED THAT A LARGE NUMBER OF E I SNAKES WILL THEREFORE BE ADVERSELY AFFECTED AS TO THEIR DISPERSAL OPPORTUNITIES, ESPECIALLY SINCE THEIR DISPERSAL RANGES COVER ALMOST 500 ACRES AND THEY CAN MOVE UP TO 13 MILES. AND THE RANGE OF ONE GEORGIA SNAKE CITED ABOVE WAS 3,000 ACRES. THE APPLICANTS ALSO ADMIT BELOW THAT THE STARKEY/SERENOVA PRESERVE IS “...large enough to support a viable population of eastern indigo snakes...” THE DEGRADATION OF THE HABITAT OF THAT PRESERVE WILL ADVERSELY AFFECT THE DISPERSAL OPPORTUNITIES THAT SUCH WIDE WILDLIFE CORRIDORS ARE DESIGNED TO PROVIDE.

“When fully constructed, the Starkey Wilderness Area will be largely an isolated island of natural land surrounded by lands that cannot support eastern indigo snakes. The connections to natural lands that will remain due to conservation ownerships will include several designated wildlife corridors...This will limit the overall amount of habitat available to the eastern indigo snake and will limit, but not stop, movement of snakes from the Starkey Wilderness Area to other habitat areas.”

“However, the Starkey Wilderness Area (approximately 19,000 acres) is large enough to support a viable population of eastern indigo snakes.”

3.4.6 Conclusion

“Some incidental take related to the project also may occur in the Action Area...”

“Harassment may be biased toward adult males because of the biased sex ratio reported above (2 males: 1 female), the likely dominance of adults in the population, and the larger home range of adult males which increases the likelihood that a male home range would intersect the project alignment...some individuals may face the threat of possible opportunities for injury or death, as some proportion of the snakes may be harassed from existing retreat sites...”

COMMENT INSERT—HOW CAN THE FEDERAL AGENCIES DETERMINE WHAT WILL BE THAT “...some proportion of the snakes may be harassed...”? THE TERM PROPORTION IS DEFINED AS:

“a part, share, or number considered in comparative relation to a whole?”

IT THE “WHOLE” OR TOTAL NUMBER IS UNKNOWN, OR THERE IS A QUESTION OF HOW LARGE IT CURRENTLY IS, THEN NO “PROPORTION” CAN BE DETERMINED. If 10 % OF A SPECIES

POPULATION WILL LIKELY SUFFER HARM, AND THEN AN APPLICANT ASKS THE FEDERAL AGENCIES TO APPROVE OF THAT “TAKING,” THEN HOW MANY INDIVIDUALS ARE WE SPEAKING OF? AND HOW MUCH MITIGATION CAN BE EXPECTED TO BE ASSESSED? AND WHAT WILL BE THE TERMS AND CONDITIONS? AS AN EXAMPLE, IF THE POPULATION IN 2019 IS 30 INDIVIDUALS (NOT LIKELY—JUST USED AS AN EXAMPLE) AND 3 ARE APPROVED FOR TAKING, THAT WOULD REPRESENT A TAKING OF 10 %. BUT IF ONLY 3 SNAKES WERE FOUND IN 2019, A TAKING OF 3 SNAKES WOULD REPRESENT 100 %. THAT WOULD NOT BE A “PROPORTION,” IT WOULD BE THE ENTIRE POPULATION. WITHOUT A NEW SURVEY, IT WOULD BE JUST GUESSWORK. AND THAT HOLDS TRUE FOR ALL LISTED SPECIES WHEN THE BASE NUMBER FROM WHICH A “PROPORTION” IS DETERMINED IS UNKNOWN OR GUESSED AT.

PART 2— SCRUB JAYS

EXCERPTS FROM THE APPLICANT’S 2019 BA WITH COMMENTS

INSERTED

3.3.5.2 Effects of the Action

There are no anticipated direct, indirect, interrelated, or interdependent impacts to Florida scrub-jays as the species **does not currently occur within the Action Area.**

COMMENT INSERT—IT MAY NOT HAVE OCCURRED IN 2013 BUT DOES IT OCCUR NOW IN 2019? THAT IS THE SEMINAL QUESTION.

As previously noted, the number of resident birds in Pasco County is very low (Boughton and Bowman 2011). The closest known Florida scrub-jay family occupies a territory east of the Cross Bar Ranch on the northern border of 4G Ranch, **more than 6.5 miles** from closest potential scrub-jay habitat in the Action Area. Use of the 4G Ranch (a hunting preserve) is by invitation only and would not likely be affected by traffic from Ridge Road.

COMMENT INSERT—THE THREE QUOTED PASSAGES FROM THE SCIENTIFIC STUDIES CITED BELOW, BY SOME OF THE MOST KNOWLEDGEABLE AND RESPECTED SCRUB JAY SCIENTISTS, CONFIRM THAT THE DISPERSAL DISTANCE OF 6.5 MILES STATED ABOVE BY PASCO IS LESS THAN ONE THIRD OF THE 35 KM (21.7 MILE) DISTANCE SCRUB JAYS HAVE BEEN KNOWN TO DISPERSE OVER CONTINUOUS HABITAT, AND ONE HALF OF THE 11.18 MILES OVER PATCHY HABITAT. THE 6.5 MILE DISTANCE GIVEN BY PASCO ABOVE IS MEANINGLESS. AND OVER A 6-YEAR PERIOD SCRUB JAYS COULD WELL HAVE DISPERSED ONLY 2.2 MILES EVERY 2 YEARS AND TRAVELLED FARTHER THAN THE 6.5 MILES CITED ABOVE FROM COLONIES IN THE CROSS-BAR RANCH.

S41.2: Dispersal distance and its demographic consequences in the Florida Scrub-jay

John W. Fitzpatrick¹, Glen E. Woolfenden² & Reed Bowman³

“In both areas a few jays, virtually all females, dispersed long distances (maxima: 35 km within continuous habitat, 18 km within patchy habitat).”

(NOTE: 35 KM = 21.748 MILES AND 11 KM = 11.18 MILES)

“We, too, found that jays occupying a naturally fragmented landscape dispersed over greater distances than those in continuous habitat.”

“These individuals choose instead to pursue an early dispersal strategy similar to that described for Red-cockaded Woodpeckers (Walters 1990, Walters *et al.* 1992a).”

COMMENT INSERT—BELOW IT STATES THAT THERE IS NO SUITABLE SCRUB JAY HABITAT EAST OF THE PARKWAY. THAT IS INCORRECT. IF IT WERE TRUE, THEN WHY DID THE USFWS INSIST THAT PLAYBACK STATIONS BE EMPLOYED EAST OF THE PARKWAY AND THAT SCRUB HABITAT BE SURVEYED ON THAT ALMOST 7,000-ACRE RANCH? THAT “POTENTIAL DEVELOPMENT” COMPRISES 2,900 ACRES OF THE ALMOST 7,000 ACRES AND CALLBACK STATIONS WERE REQUIRED BY THE USFWS ON THAT TRACT.

Thus, interrelated, and interdependent effects to Florida scrub-jays from the Extension are not anticipated since the potential development area that may request access to Ridge Road immediately east of the Suncoast Parkway is not within Florida scrub-jay habitat.

AND

Thus, direct, indirect, interrelated, and interdependent effects to Florida scrub-jays from the Extension are not anticipated.

COMMENT INSERT—WITH A CURRENT 2019 SURVEY TO SUPPORT THAT STATEMENT, IT COULD BE CHANGED TO “ARE NOT LIKELY, SINCE THERE ARE CURRENTLY NO SCRUB JAYS IN OR NEAR THE ACTION AREA AND THERE HAVE BEEN NONE SINCE 2005.” A TRULY “UPDATED” SURVEY WOULD GIVE MORE CREDENCE TO THE APPLICANTS’ “ANTICIPATION” OF NO EFFECTS TO THAT SPECIES.

3.3.5.3 Cumulative Effects

Within the Starkey Wilderness Area, much of the habitat that was once suitable for Florida scrub-jays is overgrown and no longer suitable for scrub-jays...

COMMENT INSERT—THAT ABOVE STATEMENT WAS NOT TRUE IN 2013 AND IS EVEN LESS TRUE NOW IN 2019. THE SWFWMD BURN MANAGEMENT PROGRAM HAS BEEN ONGOING AND QUITE SUCCESSFUL. THE FEDERAL AGENCIES MUST REQUIRE AN ASSESSMENT/SURVEY IN 2019 OF THE QUALITY OF THAT HABITAT, AND THE EXISTENCE OF ANY LISTED SPECIES THAT MAY HAVE DISPERSED INTO THAT ACTION AREA. AS STATED BELOW BY THE APPLICANTS THEMSELVES, SINCE 2013 THAT HABITAT HAS CONSTANTLY BEEN “CLEARED AND BURNED.”

The SWFWMD has been clearing and burning some of the overgrown habitat, but it remains isolated, and based on Boughton and Bowman (2011), it is highly unlikely that any viable population remains within dispersal distance of the Action Area or any part of the Starkey Wilderness Area. Thus, recolonization is not a reasonably foreseeable outcome. Construction of the Extension would not preclude burning in the Starkey Wilderness Area.

COMMENT INSERT—ACTUALLY THE RRE WOULD PRECLUDE BURNING, RESULTING IN A DEGRADATION OF CRITICAL HABITAT OF LISTED SPECIES THAT MAY BE ON, OR EVENTUALLY DISPERSE TO, THE SERENOVA PRESERVE. THE DEGRADATION OF SUCH HABITAT IS FORBIDDEN BY SECTION 7(a)(2) OF THE ESA.

3.3.6 Conclusion

In the absence of other current, site-specific data indicating the presence of scrub-jays within the Action Area, the appropriate determination is that the Extension will have “No Effect” on scrub-jays. USFWS concurrence of the “No Effect” determination is requested.

COMMENT INSERT—THE OPERATIVE PHRASE ABOVE IS In the absence of other current, site-specific data IN 2019, THAT IS EXACTLY WHERE WE ARE AT, RIGHT IN THE MIDDLE OF:

“...the absence of...site-specific data.”

A SECOND SCRUB JAY EXPERT CONFIRMS THAT A NEW SCRUB JAY SURVEY IS REQUIRED

COMMENT INSERT—WE ASKED DR. FUERTES AT THE ARCHBOLD BIOLOGICAL STATION, IN A BELOW 2016 EMAIL, HOW LONG WAS THE VALIDITY PERIOD FOR A SCRUB JAY SURVEY. HE

REFERRED US TO DR. JOHN FITZPATRICK AT CORNELL, WHO REPLIED THAT A SCRUB JAY SURVEY IS REALLY GOOD FOR ONLY 1 YEAR.

Hello Dan,

A thorough survey of suitable Florida Scrub Jay habitat – preferably conducted between March and June -- **is really valid only for about one year.**

Best regards,

John W. Fitzpatrick
Director, Cornell Lab of Ornithology
Te. 607-254-2410
<http://birds.cornell.edu>

From: Dan Rametta [mailto:ramettadan@hotmail.com]
Sent: Monday, August 29, 2016 8:14 AM
To: John W. Fitzpatrick <jwf7@cornell.edu>
Subject: Question about scrub jay surveys

Dr. Fuertes,

Years ago I met Glen Woolfendin and I think John Fitzpatrick on a visit to the Archbold Biological Center and I went out with Glen to see the scrub jays. I think Glen passed away so I will ask you a question I would have asked Glen. The question is: **How long is a scrub jay survey good for? What is the usual validity period (I think it is 3 years) after which another survey must take place? Do you know?**

EXCERPTS FROM A 1999 SCRUB JAY SCIENTIFIC STUDY

COMMENT INSERT—THE STUDY BELOW WAS ALREADY REFERRED TO ABOVE. EXCERPTS WILL SHOW THAT, ALTHOUGH NOT THE NORM, LONG DISTANCE DISPERSAL OF SCRUB JAYS DOES OCCUR AND HAS BEEN VERIFIED FOR A DISTANCE OF UP TO 11.18 MILES OVER PATCHY HABITAT AS OCCURS IN THE 6.5-MILE DISTANCE BETWEEN THE CROSS-BAR RANCH CITED ABOVE, AND THE STARKEY/SERENOVA PRESERVE. THAT 6.5 MILE DISTANCE IS EVEN SHORTER IF JAYS DISPERSED INTO SCRUB HABITAT ON THE ALMOST 7,000-ACRE BEXLEY RANCH EAST OF THE PARKWAY.

<file:///C:/Users/Dan/Downloads/Fitzpatrick%20et%20al.%201999.htm>

S41.2: Dispersal distance and its demographic consequences in the Florida Scrub-jay

John W. Fitzpatrick¹, Glen E. Woolfenden² & Reed Bowman³

1 Cornell Laboratory of Ornithology, 159 Sapsucker Woods Rd., Ithaca, NY 14850, USA, e-mail <mailto:jwf7@cornell.edu>; *2,3* Archbold Biological Station, PO Box 2057, Lake Placid, FL 33862 USA, e-mail gwoolfenden@archbold-station.org

Fitzpatrick, J.W., Woolfenden, G.E. & Bowman, R. 1999. Dispersal distance and its demographic consequences in the Florida Scrub-jay. In: Adams, N.J. & Slotow, R.H. (eds) Proc. 22 Int. Ornithol. Congr., Durban: 2465-2479. Johannesburg: BirdLife South Africa.

In both areas a few jays, virtually all females, dispersed long distances (maxima: 35 km within continuous habitat, 18 km within patchy habitat).

COMMENT INSERT—WE REPEAT FOR CLARITY THAT 35 KM = 21.748 MILES AND 11 KM = 11.18 MILES.

Over 30 years we have accumulated extensive information about the frequency and distribution of successful dispersers that moved outside our Demography Tract. Every few years between 1975 and 1991 we conducted extensive searches for marked dispersers by censusing otherwise unstudied jay families throughout Highlands County, **up to 35 km from our study tract**. Such efforts were especially thorough, involving several hundred jay families, in 1979, 1985, and 1991. In 1992-93 we co-ordinated a statewide survey of Florida Scrub-Jays to produce a detailed distribution map for the species as a whole (Stith *et al.* 1996). Approximately 3,200 of the 4,000 remaining family groups were directly observed by biologists during that 18-month period (Fitzpatrick *et al.* 1993).

COMMENT INSERT—THE STUDY DESCRIBES 2 CLASSES OF BREEDING JAYS, ONE BEING LONG DISPERSERS. IT ALSO SAYS THAT THEY REPRESENT A MINORITY OF JAYS, MOSTLY FEMALES AND THEY EXHIBIT A DISPERSAL STRATEGY MORE LIKE THE LONG DISTANCE DISPERSING RED COCKATED WOODPECKERS WE DESCRIBED IN COMMENT # 27.

Who are the few long-distance dispersers? For a species with such a home-based dispersal strategy, one hypothesis is that individuals move progressively farther away only after attempting unsuccessfully to fill vacancies near home (e.g. Zack and Rabenold 1989). Our data fail to support this hypothesis. For both males and females, the longest-distance dispersers (those dispersing more than 9 territories from home) were significantly biased toward jays that left home permanently before age 2. A few of these even departed before age 1, a rare event in this species. We detected no features of family or neighbourhood composition that were correlated with these long-distance dispersers at the time of their permanent departure. **We conclude that for a minority of jays -- mostly females -- the prebreeding period spent searching for vacancies within the natal neighbourhood is short or absent. These individuals choose**

instead to pursue an early dispersal strategy similar to that described for Red-cockaded Woodpeckers (Walters 1990, Walters *et al.* 1992a).

These features tend to characterize two classes of breeding jays: (1) long-distance dispersers, and (2) males in the process of budding and growing a new territory.

THAT CONCLUDES COMMENT # 29.

RESPECTFULLY SUBMITTED,

Dan & Sara Rametta
Richard Sommerville
Save Our Serenova
Citizens For Sanity.Com,Inc.
& The Commenters Group

cc: Brigadier General Diana M Holland, Commander, South Atlantic Division
Clif Payne, Chief, Special Projects and Enforcement Branch
Shayne Hayes, Project Manager
Joshua R. Holmes, Principal Assistant District Counsel for Regulatory
Christina Storz, Assistant District Counsel
Cynthia F. Van Der Wiele, Ph.D, USEPA, Region 4